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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,888	09/21/2001	Sachiko Tajima	211653US0	2424

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/18/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/956,888

Applicant(s)

TAJIMA ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6 and 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15. 6) ☐ Other: _____

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DETAILED ACTION

Receipt of Request for Continued Examination, Preliminary Amendment D, and Information Disclosure Statement received on March 26, 2003 is acknowledged. Claims 1-6 and 13-19 are included in the prosecution of this application.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection based on Amendment D and Information Disclosure.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 contains the trademark/trade name Magnol and Anethole. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or

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trade name. In the present case, the trademark/trade name is used to identify/describe a perfume and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5-6, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2033939 in view XP-002226338.

GB teaches a low ammonia bleach composition. Examples 1 discloses a composition containing 2-20% of an ammonium or alkali earth metal persulfate, perborate, percarbonate, carbonate, 1.5 -7% of hydrogen peroxide, monoethanolamine, a buffer, and water. Note example 1-3. The reference discloses that the composition produces trace amounts of ammonia gas. See page 3, lines 37-45. Additives such as perfume and essential oils up to 20% is taught on page 3, lines 114-117 and examples.

The reference does not specify the perfume utilized.

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XP teaches a perfume composition that deodorizes ammonia odor produced by components contained in cosmetics. The perfume composition contains one or more of cis-3-hexenol, geraniol, linalool, terpineol, etc.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings the teachings of GB and XP and include XP' s perfume composition into GB's hair composition. One would be motivated to do so to deodorize the ammonia gas that is produced by the hair product taught in GB.

Claims 1-3, 5-6, and 13-19 under are rejected 35 U.S.C. 103(a) as being unpatentable over Yoshida et al (6036730) in view of Fragrance Journal (June 1993) or JP 2001154644.

Yoshida et al teach a hair dye composition. Yoshida teaches hair dye composition that contains instant oxidation dye precursors and instant coupling agents. See column 8, lines 24-35. The composition also contains alkalifying agents such as ammonia or alkanoamines (monoethanolamine). See column 8, lines 40-43. Further, the composition may also contain perfumes. See column 8, line 48. Lastly, Yoshida et al teach oxidation hair dye type contains ammonium thioglycolate. See column 8, line 57.

Yoshida et al do not specify the perfume used.

The publication teaches perfumes such as cis-hexenol that mask wave lotions containing ammonium thioglycolates in the base composition. The composition contains 0.1% cis-hexenol applied to a base composition containing ammonium thioglycolate, 1.2% ammonia water, and propylene glycol among other components (Note Table 2 and Table 3).

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JP teaches various chemical perfumes such as cis-3-hexenol, lavender, etc to mask odors of the scalp. JP teaches the inclusion of these perfumes in various scalp cosmetics.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings Yoshida et al and the Fragrance Journal and include the instant perfume. One would be motivated to do so since the journal teaches cis-hexenol effectively masks base compositions containing ammonium thioglycolates. Therefore, since Yoshida et al teach a preferred oxidative hair dye formulation containing ammonium thioglycolate, a skilled artisan would reasonably expect cis-hexenol to have similar masking capabilities in Yoshida's composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Yoshida et al and JP and include the instant perfume. One would be motivated to do so since JP teaches instant perfumes to effectively mask scalp odors and can be used in cosmetic compositions. Therefore, one would reasonably expect similar results since Yoshida et al teach a hair composition that is applied to the head.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for


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the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG

June 13, 2003


MICHAEL G. HARTLEY
PRIMARY EXAMINER